UNITED STATES
v.
JIMMIE (JUANITA) P. LAING

IBLA 70-644 Decided August 19, 1971

Administrative Procedure Act: Burden of Proof--Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

> Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

Mining Claims: Hearings--Rules of Practice: Evidence

> Where the contestee declines to present any evidence to rebut the contestant's prima facie case, either at the hearing or during a subsequent 30-day period while the record is held open for the receipt of such evidence, and where the contestee likewise fails to avail herself of opportunities provided to present motions for a rehearing and to have the claims reexamined by the government, motions presented on appeal for a reexamination of the claims and for a new hearing will be denied.

Administrative Procedure Act: Burden of Proof--Mining Claims: Determination of Validity--Rules of Practice: Evidence

> The sole basis for decision in a contest case is the record made at the hearing, although evidence submitted on appeal can be considered for the purpose of determining whether a further hearing is warranted; but in the absence of substantial proof tending to show the existence of a valid discovery on the claims there is no basis for further evidentiary proceedings.

IBLA 70-644	:	Riverside Contest No. 2073
UNITES STATES	:	Placer and lode mining
v.	:	claims held null and void
JIMMIE (JUANITA) P. LAING	:	Affirmed

DECISION

Mrs. Jimmie P. Laing has appealed to the Bureau of Land Management, 1/ from the May 28, 1970, decision of the hearing examiner holding the White Fawn and White Fawn 2 placer mining claims, and White Fawn 1, 2, and 3 lode mining claims null and void for lack of discovery of valuable mineral deposits. 2/

A contest complaint was filed March 11, 1969, by the manager of the Riverside Land Office, Bureau of Land Management, on behalf of the Forest Service, Department of Agriculture. The claims are located in the San Bernardino National Forest, California. The contest complaint charged that each of the claims are null and void on two grounds: (1) lack of discovery of a valuable mineral deposit thereon, and (2) the lands on which the claims are located are nonmineral in character.

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970, Circular 2273, 35 F.R. 10009, 10012.

2/ At the hearing Mrs. Laing stated that she had relinquished her three lode mining claims and she disclaimed any further interest therein. However, a filing fee was paid for all five claims in this appeal. The contestee has not withdrawn her statement that she relinquished the lode claims, or presented evidence relating thereto; therefore, we will not further consider their validity.

At the hearing Mrs. Laing appeared and stated that she had engaged an attorney who could not be present because he had a court appearance to make. Mrs. Laing informed the examiner that her attorney had instructed her to request a postponement of the hearing and that he was holding all of the contestee's records pertaining to the case. No request for a continuance had been filed by the contestee or her attorney prior to the time the hearing convened. Mrs. Laing contacted her attorney two weeks before the hearing but no reason was given for his failure to file a written request for postponement.

The hearing examiner denied the request for postponement as untimely, but he agreed to hold the record open for 30 days during which time contestee's attorney would be allowed to submit in writing whatever evidence he chose, or a summary of her evidence in support of a rehearing.

The hearing then proceeded with the presentation of the contestant's witness, Emmett B. Ball, Jr., a Forest Service mining engineer. Ball stated that he first examined the claims in 1966, at which time he was accompanied by Mrs. Laing and others. She pointed out a hole approximately two feet deep which she stated was the discovery pit. On that occasion she stated that the discovery consisted of gold, silver and platinum group metals. On a later visit Ball found a new hold which had been excavated by a back-hoe. He sampled this hole, panned the sample and sent the concentrate to a private laboratory for assay. Having heard that the contestee also alleged that the claim was valuable for zirconium, he ordered an assay for that element as well. The assay reports indicated 0.08 oz. gold per ton and 0.13 oz. zirconium. No platinum or silver was indicated. The witness stated that in his opinion there was insufficient mineral to justify a prudent person in spending time, effort and labor these claims in the reasonable hope of developing a valuable mine. The presentation of this evidence constituted the contestant's prima facie case of the invalidity of the claims. Castle v. Womble, 19 L.D. 455 (1894); United States v. Ernest Higbee et al., A-301063 (April 1, 1970).

On cross-examination by Mrs. Laing the following exchange occurred:

Q. "I have a strata of platinum sand that wide. You asked me where is your platinum. I said you

> go find it like I did. Do you remember? You said, well, you dig a hole and then I will take out samples. I said if you want a hole dug, you get on a shovel and dig it. Remember that? And you wouldn't . . ."
>
> A. "I don't recall. You could have. I don't recall that."

At the conclusion of Ball's testimony the contestee stated that she did not wish to submit any evidence without her attorney. She was informed that the record would be held open so that her attorney would have 30 days to summarize her evidence and submit it in writing to the hearing officer. Counsel for the Forest Service offered to have the claims reexamined if she would point our her mineralization or expose new mineralization.

The 30-day period expired during which neither the contestee nor her attorney submitted any further evidence or requested a rehearing, nor was the Forest Service requested to reexamine the claims. The examiner then rendered his decision.

On appeal the contestee, represented by the same attorney, requests a new hearing to present evidence on an issue of fact, 3/ or, in the alternative, an opportunity for oral argument. Contestee also requests that a new mineral examination and assay be conducted by an independent laboratory, implying bias on the part of Ball and his employer, the Forest Service, and asserting the examination was "inefficient and inaccurate." It is argued that in 1965 the contestant had two assays of material from the claims which indicated values of $25.15 and $26.50 per ton, respectively. It is also alleged that "either the contestant or his agents" unlawfully damaged or destroyed the contestee's improvements on the claim.

The examiner properly denied the request for a postponement of the hearing. The applicable regulation, 43 CFR 4.432 (formerly 1852.3-3), provides:

> (a) Postponements of hearings will not be allowed upon the request of any party or the

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3/ The granting of a hearing to present evidence of fact is within the discretion of the Board of Land Appeals. 43 CFR 4.415, 36 F.R. 7200.

> Bureau except upon a showing of good cause and proper diligence. The request for a postponement must be served upon all parties to the proceedings and filed in the Office of the Examiner at least ten days prior to the date of the hearing. In no case will a request for postponement served or filed less than ten days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

Claimants who challenge a mineral examiner to discover the alleged valuable mineral deposit for himself assume the risk that he may not be able to do so. Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case. It is the duty of the claimant to keep such discovery points available for inspection. United States v. Wayne Winters, 2 IBLA 329 (1971); United States v. Hines Gilbert Gold Mines Company, 1 IBLA 296 (1970), and cases cited therein.

Appellant's request for a new hearing and for reexamination of the claims is denied. Upon the Government's presentation of a prima facie case of invalidity, the burden of presenting a preponderance of evidence to show a valid discovery devolved upon the contestee. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). Appellant in this case had two opportunities to present such evidence: at the hearing and during the 30-day period immediately subsequent thereto. As noted above, contestee gave no reason for her attorney's failure to file a request for postponement 10 days prior to the hearing when she had contacted him at least two weeks earlier. Nor has any explanation been offered for the contestee's failure to present evidence when afforded the opportunity. She also had opportunity to request reexamination of the claims by the Forest Service during that period. She did not avail herself of these opportunities. It is alleged that she had assay reports in 1965 indicating good ore, but these reports were not submitted either at the hearing convened for the purpose of obtaining

such evidence, or at any subsequent time, nor was any other form of evidence offered to substantiate her claim of value. Of course, the sole basis for decision in a contest case is the record made at the hearing, but evidence submitted on appeal can be considered for the purpose of determining whether a further hearing is warranted. United States v. Gilbert C. Wedertz, 71 I.D. 38 (1964).

In the absence of substantial proof tending to show the existence of a discovery of a valuable mineral deposit on the claims nothing would be gained by further evidentiary proceedings in this case. See United States v. Wayne Winters, supra.

Mrs. Laing's allegation that the Forest Service destroyed her improvements is not a matter within our jurisdiction and we make no finding with respect thereto, except to observe that the record of the hearing shows that she there stated that the alleged damage might have been done by a State agency.

In the absence of any evidence tending to support appellant's contention that the claims are valid oral argument would serve no useful purpose.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the hearing examiner is affirmed.

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Edward W. Stuebing, Member

We concur:

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Newton Frishberg, Chairman

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Anne Poindexter Lewis, Member